

Date of Hearing: April 19, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2183 (Gatto) – As Amended March 15, 2016

SUBJECT: California State University: personal service contracts.

SUMMARY: Establishes standards for the use of personal services contracts by the California State University (CSU) Trustees. Specifically, **this bill:**

- 1) Establishes similar requirements and review processes for personal services contracting by the CSU as those that exist for State agencies, as specified.
- 2) Specifies that use of personal services contracting to achieve costs savings is permissible when the CSU clearly demonstrates that the contract will result in overall cost savings and:
 - a) Prescribes the specific costs to be included/excluded in the calculation;
 - b) Prohibits approval solely on the basis of savings from lower contractor pay rates or benefits, and requires that wages be at the industry's level and that they do not significantly undercut university pay rates;
 - c) Displacement of university employees, as specified, is not caused by the contract; and,
 - d) It does not affect nondiscrimination efforts, savings are large enough to be maintained during cost fluctuations, are clearly justified by size and duration, contracts are publicly and competitively bid, and various other requirements.
- 3) Restricts personal services contracting, unless the following conditions are met:
 - a) The Legislature mandates or authorizes work be performed by independent contractors, and the contract is for a new university function;
 - b) Services are unavailable or unable to be satisfactorily performed within the university or by university employees;
 - c) Services are incidental to a purchase or lease contract;
 - d) The legislative, administrative, or legal goals/purposes cannot be accomplished through the regular or ordinary hiring process;
 - e) CSU employees cannot feasibly supply the equipment, materials, facilities, or support services provided by the contractor;
 - f) The contract is for the provision of training courses for which qualified CSU employees are not available; and,
 - g) The contract is for services of an urgent, temporary, or occasional nature.

- 4) Defines "indirect overhead costs" as the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.
- 5) Defines "firm" as a corporation, partnership, nonprofit organization, or sole proprietorship.

EXISTING LAW:

- 1) Authorizes the CSU Trustees to enter into agreements with any public or private agency, officer, person, or institution, corporation, association, or foundation for the performance of acts or the furnishing of services, facilities, materials, goods, supplies, or equipment by or for the Trustees or for the joint performance of an act or function or the joint furnishing of services and facilities by the Trustees and the other party to the agreement. Specifies that the Trustees shall prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment; and, said policies shall include competitive bids or proposals as, specified (Education Code Section 89036).
- 2) Provides standards for the use of personal service contracts by state agencies with specific criteria for contracting outside state service. These criteria include demonstration of cost savings, definition of costs, and requirements that work not be contracted out solely on the basis of lower pay rates or benefits, and justification of savings based on the size and duration of the contract (Government Code Section 19130).
- 3) Establishes the State Civil Service Act and establishes the State Personnel Board, as a five member body appointed by the Governor and approved by the Senate, to enforce and administer civil service statutes. The Constitution establishes several exemptions from the civil service, including officers and employees of the University of California and the CSU (Article 7 of the California Constitution).

FISCAL EFFECT: Unknown

COMMENTS: *Need for the measure.* According to the author, the CSU is not subject to some of the same standards of accountability that apply to other state agencies regarding personal service contracts. The author contends that this has, "resulted in several debunk contracts, including: a CSU that ended a three-year agreement with its employees and entered into a five-year contract with a private and external custodial firm, which resulted in displacement of those other custodial employees."

This measure seeks to align the CSU's practice of contracting out with those required by other state agencies.

State Civil Service Act. Provisions of the Act specifically exclude officers and employees of the CSU from state civil service. Additionally, the Legislature has granted the CSU other exemptions from provisions within the Act, including: (1) exclusion from Public Contract Code provisions regarding the acquisition of goods and services; and, (2) authority to promulgate regulations without having to utilize the procedures outlined in the Administrative Procedures Act.

This measure is modeled after the State Civil Service Act used to govern personal services contracting within the state. It is unclear whether or not, due to the existing exemptions the

Legislature has conferred upon the CSU, if it is warranted for the CSU to now have to align their personal services contracting provisions under the Act.

Personal services contract. A personal services contract is any contract, requisition, purchase order, etc. (except public works contracts) under which labor or personal services is a significant, separately identifiable element. The business or person performing these contractual services must be an independent contractor that does not have status as an employee of the State.

A cost-savings based personal services contract is a personal services contract proposed to achieve cost savings and subject to the provisions of existing law.

Collective bargaining. Provisions regarding contracting out are addressed in Article 3 of the California State University Employees Union (CSUEU) and Article 4 of the State Employees Trades Council (SETC) collective bargaining agreements. The CSUEU agreement authorizes contracting out provided that it does not displace bargaining unit employees, and defines displacement to include layoff, demotion, involuntary transfer to a new classification, or to a new satellite campus location, or a location requiring a change of residence, and involuntary time base reductions. The CSU is required to notify the Union when contracting out is to be on a long-term basis and the Union is authorized to request to meet and confer on the impacts of long-term contracting out work. Prior to meeting, the CSU is required to provide CSUEU all existing relevant information, including requests for proposals, copies of bids received, and any cost analysis used to evaluate the need for contracting out.

The SETC agreement, prior to contracting out, requires a campus to consider the availability of SETC employees to perform the work, whether they have the special skills and licensure necessary, whether the work can be completed within time constraints applicable to the project, the availability of required materials and/or equipment, and the cost involved in performing the work in-house versus contracting out. Notification of the Chief Campus Steward is required prior to the start of any such contracted work.

Previous legislation. SB 669 (Pan) of 2015, which never had a vote in the Senate Education Committee, is very similar in nature to this measure.

SB 943 (Beall) of 2014, which failed to receive enough votes for passage out of the Senate Education Committee, was similar to this bill; and, SB 943 assigned the State Personnel Board oversight of CSU contracting practices.

AB 2225 (Lowenthal) of 2002, which was held in the Senate Education Committee, proposed similar personal services contracting standards for the CSU.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO
California State Council of the Services Employees International Union
California State University Employees Union
Professional Engineers in California Government

Opposition

California Chamber of Commerce
California State University

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